SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

In the matter of the application of

THE BANK OF NEW YORK MELLON, in its Capacity as Trustee or Indenture Trustee of 530 Countrywide Residential Mortgage-Backed Securitization Trusts,

Petitioner,

For Judicial Instructions under CPLR Article 77 on the Distribution of a Settlement Payment.

Index No. 150973/2016

Hon. Saliann Scarpulla
Part 39

CENTER COURT, LLC'S OBJECTION TO TIG'S ASSERTION OF NEW ARGUMENTS THAT ARE OUTSIDE THE SCOPE OF THIS PROCEEDING

TO THE HONORABLE JUSTICE SCARPULLA:

Pursuant to the Court's Order to Show Cause and the Court's Scheduling Order, on March 4, 2016, TIG Securitized Asset Master Fund LP ("TIG") filed a Notice of Intention to Appear and Object (Dkt. 29), as well as a Statement of Grounds for Objection to Petition (Dkt. 30). TIG's position was conveyed to all parties and investors by the posting of its filings on the settlement website (*see* http://www.cwrmbssettlement.com/docs_sc.php). In those filings, TIG requested the Court order the Trustee "to distribute the settlement proceeds for CWABS 2006-12 in accordance with the distribution provisions of the Settlement Agreement," which specifically provides that the Allocable Shares shall be distributed as though they were Subsequent Recoveries. (*See* Dkt. 30 at p. 4.) Moreover, TIG represented that its position would not change absent "additional information made available by BNYM or produced by any party in this action." (Dkt. 29 at p. 1.) In reliance on that position, Center Court, LLC ("Center Court"), and presumably other investors, did not file a response to TIG's Notice and Memorandum of Law.

Inexplicably, and without notice to any party to this proceeding other than PIMCO, on June 27, 2016, TIG filed a second Memorandum of Law Concerning the Distribution of CWABS 2006-12 (Dkt. 86) asserting for the first time that the Allocable Shares of the Settlement may not be treated as "Subsequent Recoveries," but, instead, should be treated as "Excess Cashflow." Not only is this new-found position untimely, contrary to its previous position, and absent "additional information made available by BNYM or produced by any party in this action," it also is beyond the limited scope of this proceeding. The Petition and proceedings to date make clear that this action relates solely to the order of operations in certain over-collateralized trusts, and not the characterization of the payment itself.

That the Allocable Shares will be treated as Subsequent Recoveries has long been settled, both by judicial order and by approval in a private letter ruling by the Internal Revenue Service ("IRS"). Any order to the contrary—by TIG's own admission—will cause harm to innocent Certificateholders who long have been relying on the distribution provisions of the Settlement Agreement. Accordingly, Center Court respectfully requests the Court deny this untimely and last-ditch effort of a subordinated Certificateholder to gain an unfair advantage over more senior Certificateholders.

ARGUMENT

I. TIG's Argument is Outside the Scope of This Proceeding and is Untimely.

As the Verified Petition (Dkt. 1) makes clear, these proceedings in no way relate to the characterization of Allocable Shares as Subsequent Recoveries. Paragraph 15 of the Verified Petition provides, in part:

> Upon payment of the Settlement Payment, the Settlement Agreement requires **(with certain exceptions not relevant here)** the Trustee to distribute each Covered Trust's Allocable Share to Certificateholders in accordance with the provisions of the Governing Agreements as though the Allocable Share was a

> "Subsequent Recovery," generally defined to mean unexpected funds received by the trust in connection with a particular mortgage loan that previously was written off.

(Dkt. 1 at p. 4) (emphasis added). Moreover, in its prayer for relief, the Trustee requested a specific instruction by the Court determining whether:

> (a) the Trustee should follow the Settlement Agreement and continue its practice of paying first, but make an adjustment, described in this Verified Petition, to the overcollateralization calculation in order to prevent leakage; or
>
> (b) the Trustee should follow the Settlement Agreement and continue its practice of paying first, but make no adjustment to the overcollateralization calculation, thus permitting leakage; or
>
> (c) the Trustee should change its general order of operations in the Covered Trusts to "write up first and pay second" notwithstanding Subparagraph 3(d)(ii) of the Settlement Agreement.

(Dkt. 1 at p. 16.) At no time has the Trustee—nor any other party to this proceeding—indicated that these proceedings are in any way broad enough to cover the appropriateness of the characterization of the Allocable Shares for any trust as Subsequent Recoveries. Indeed, to the contrary, every other party to this proceeding agrees that the issue TIG now raises is outside the very limited scope of this action. (*See, e.g.*, statements by counsel for Prosiris Capital Management LP and Tilden Park Capital Management LP, Transcript of proceedings held on March 15, 2016 at 20:6-9) ("Your Honor, the petition raised only a few discrete issues. They raised an issue about the order of operations, and they raised an issue about how overcollateralization is calculated.")

Thus, not only should the Court refuse to consider TIG's new argument because it was not timely raised under the deadlines set in two Court orders (*see* Dkt. 14, 25), it also should refuse to consider TIG's argument because it is outside the limited scope of this action.

II. TIG Admitted that its Position is without Merit.

TIG also has admitted that "there is nothing inherently unfair or inequitable about applying the distribution provisions of the Settlement Agreement to CWABS 2006-12." (Dkt. 30 at p. 4.) TIG further has admitted that if the Court were to do what it now requests—rewrite the distribution provisions of the Settlement Agreement with respect to its trust—it would cause harm to innocent Certificateholders who have long been acting in reliance thereon. (Dkt. 30 at p. 3) ("The Court, sitting as a court of equity, should not shift the costs of BNY Mellon's own failures to *other innocent Certificateholders who would be harmed if the Court were now to rewrite the distribution provisions of the Settlement Agreement.*") (emphasis added.) Accordingly, by TIG's own admission, upholding its recent objection would harm other innocent Certificateholders. TIG's objection should, therefore, be overruled.

III. TIG's Position is Substantively Flawed.

Finally, TIG complains that the Settlement Payment cannot be characterized as "Subsequent Recoveries" because there has been no analysis to relate that payment to any particular liquidated Mortgage Loan in its trust. (See Dkt. 86 at pp. 2-3.) TIG is wrong. In addition to the reasons raised in the Submission of PIMCO Regarding Distribution of Settlement Payment to CWL (CWABS 2006-12) (Dkt. 82), Center Court notes that this argument is fatally flawed because the IRS issued a directly contrary private letter ruling. Moreover, given that the IRS's private letter ruling is a condition precedent to the finality of the Settlement Agreement, a ruling by this Court that the Allocable Shares should be distributed as anything other than as Subsequent Recoveries would entirely upend the Settlement Agreement as to this Trust.

Prior to considering the Settlement to be finally approved, Paragraph 2(e) of the Settlement Agreement requires a private letter ruling from the IRS "applicable to all of the

Covered Trusts" relating to, among other things, the "allocation of the Settlement Payment to a Covered Trust and the methodology for determining such allocation," as well as "the distribution of the Settlement Payment by a Covered Trust to any of its Investors and the methodology for determining such distributions". (*See* Settlement Agreement at ¶2(e).) In accordance with this provision of the Settlement Agreement, the Institutional Investors sought, and the IRS issued, a private letter ruling. (*See* Private Letter Ruling 113051-15, attached hereto as Exhibit A.)

In considering the allocation of the Settlement Payment to the trusts, as well as the distribution thereof, the IRS based its private letter ruling on the exact type of calculation and distribution that TIG only now complains. Indeed, the Private Letter Ruling makes clear that the IRS understood that the Allocable Shares were to be calculated based on net losses to the trusts, and not based upon losses with respect to any individual mortgage loan. The IRS further recognized that a subsequent recovery generally was defined as an unexpected amount that a trust might receive with respect to a particular mortgage loan. Specifically, the IRS discussed:

> The Settlement Payment allocations are determined by reference to the amount of "net losses" incurred by each Taxpayer. The Expert will calculate the amount of net losses for each Taxpayer that have been or are estimated to be borne by that Taxpayer from its inception date to its expected termination. That amount will be expressed as a percentage of the sum of the net losses that are estimated to be borne by all Taxpayers from their inception dates to their expected dates of termination (the "Net Loss Percentage"). The Expert will calculate each Taxpayer's allocable share of the Settlement Payment by multiplying the amount of the Settlement Payment by the Net Loss Percentage for each Taxpayer (the "Allocable Share"). If applicable, the Expert will calculate the portion of the Allocable Share that relates to principal-only certificates or notes, and the portion of the Allocable Share that relates to all other certificates or notes.
>
> ... More specifically, the Trustee will distribute the Allocable Shares to Investors as though it were a "subsequent recovery" as defined in the applicable Governing Agreements. A subsequent recovery is defined as an unexpected amount that a REMIC trust might receive from time to time with respect to a Mortgage Loan for which the Master Servicer has previously determined that all liquidation proceeds that it expects to recover on the Mortgage Loan or the related mortgaged property have been received and, consequently, a realized loss typically has been taken and applied under the applicable Governing Agreement to reduce the outstanding

> principal balance(s) of the outstanding REMIC regular interest certificates, in inverse order of seniority. Subsequent recoveries are made as returns of principal only on the then-outstanding principal balances of the relevant investors' interests.

(Private Letter Ruling at p. 7) (emphasis added.)

Regardless that the IRS recognized that the Allocable Shares were not going to be calculated on a loan-level basis for any trust, and that "subsequent recoveries," nonetheless related to an unexpected amount that a trust might from time to time receive "with respect to a Mortgage Loan," the IRS concluded that the Allocable Shares would still be considered payment received on a particular qualified mortgage:

> The Allocable Share under Settlement Agreement is the result of a dispute between Institutional Investors and the Trustee with Company A and Company I regarding whether the Mortgage Loans conveyed to each Taxpayer violated customary representations and warranties under the respective Governing Agreements.... Each Taxpayer's right to the Allocable Share under the Settlement Agreement is akin to a payment received by such Taxpayer from a sponsor or prior owner in lieu of the sponsor or prior owner's repurchase of such a defective obligation. Therefore, pursuant to Section 1.860G-2(g)(1)(ii), the Allocable Share will be considered a payment received on a qualified mortgage pursuant to Section 1.860G-2(g)(1)(ii).

(Private Letter Ruling at p. 10) (emphasis added.) Thus, TIG's exact position was considered by the IRS, yet the IRS still deemed the payment of Allocable Shares as a Subsequent Recovery to be allowed. Accordingly, the Court should overrule TIG's objection.

CONCLUSION

For the foregoing reasons, Center Court, LLC respectfully requests the Court deny TIG's objection. Center Court requests such other relief, at law or in equity, to which it may be justly entitled.

DATED: July 11, 2016
New York, New York

Respectfully submitted,

MCKOOL SMITH, P.C.

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Attorneys for Center Court, LLC

EXHIBIT A

BNY MELLON

INFORMATIONAL NOTICE

INFORMATIONAL NOTICE CONCERNING THE OCCURRENCE OF THE "APPROVAL DATE" UNDER THE SETTLEMENT AGREEMENT, DATED JUNE 28, 2011, BETWEEN THE BANK OF NEW YORK MELLON, AS TRUSTEE OR INDENTURE TRUSTEE FOR THE FIVE HUNDRED AND THIRTY (530) COUNTRYWIDE MORTGAGE-BACKED SECURITIZATION TRUSTS LISTED IN EXHIBIT A HERETO (THE "SETTLEMENT TRUSTS"), ON THE ONE HAND, AND BANK OF AMERICA CORPORATION, COUNTRYWIDE HOME LOANS, INC., COUNTRYWIDE FINANCIAL CORPORATION, AND BANK OF AMERICA, N.A. (AS SUCCESSOR BY MERGER TO BAC HOME LOANS SERVICING, LP) ON THE OTHER (THE "SETTLEMENT AGREEMENT")[1]

THIS INFORMATIONAL NOTICE (THE "NOTICE") CONTAINS IMPORTANT INFORMATION THAT MAY BE OF INTEREST TO THE BENEFICIAL OWNERS OF THE CERTIFICATES OR NOTES (COLLECTIVELY, THE "SUBJECT SECURITIES") ISSUED BY THE SETTLEMENT TRUSTS AND OTHER PERSONS POTENTIALLY INTERESTED IN THE SETTLEMENT TRUSTS

Dated: October 13, 2015

Ladies and Gentlemen:

This Notice is given by The Bank of New York Mellon (the "Trustee"), as trustee or indenture trustee under the Pooling and Servicing Agreements and Indentures and related Sales and Servicing Agreements (collectively, the "Governing Agreements") governing the Settlement Trusts. The purpose of this Notice is to inform the beneficial owners of the Subject Securities and other persons potentially interested in the Settlement Trusts that the requirements of Subparagraphs 2(e) and 2(f) of the Settlement Agreement have been satisfied in full on October 5, 2015 and October 13, 2015, respectively, and that therefore **the "Approval Date" under the Settlement Agreement has occurred on October 13, 2015**.

Subparagraph 2(e) of the Settlement Agreement conditions Final Court Approval on the receipt of certain private letter ruling(s) from the Internal Revenue Service ("IRS") with respect to the Settlement Trusts and provides that the Trustee shall cause the submission of a request for such private letter ruling(s) to the IRS and use reasonable best efforts to pursue such request. Subparagraph 2(f) of the Settlement Agreement conditions Final Court Approval on the receipt, at the Trustee's request, of an opinion of Trustee tax counsel with respect to certain states concerning the same matters that would be covered by the requested private letter ruling(s).

[1] Capitalized terms used but not defined in this Notice shall have the meanings ascribed to them in the Settlement Agreement.

In a prior informational notice, dated June 29, 2015 (the "June 2015 Informational Notice"), the Trustee informed the beneficial owners of the Subject Securities and other persons potentially interested in the Settlement Trusts that on April 8, 2015, the Trustee submitted to the IRS a request for private letter ruling(s) under Sections 860A-860G of the Internal Revenue Code of 1986, as amended (the "Code") with respect to the Settlement Agreement (the "Private Ruling Request"). The Trustee further informed the beneficial owners of the Subject Securities and other persons potentially interested in the Settlement Trusts that the Trustee expected delivery of the opinions contemplated under Subparagraph 2(f) of the Settlement Agreement shortly after the issuance by the IRS of the private letter ruling(s) requested in the Private Ruling Request.

The Trustee hereby provides notice that on October 5, 2015, Trustee's tax counsel received, on behalf of Trustee, a private letter ruling from the IRS (PLR-113051-15) that satisfies the requirements of Subparagraph 2(e) of the Settlement Agreement in all respects (the "Private Letter Ruling"). A copy of the Private Letter Ruling is attached as Exhibit B hereto.

The Trustee hereby provides further notice that on October 13, 2015, the Trustee received opinions from Trustee tax counsel (the "Tax Opinions") that satisfy the requirements of Subparagraph 2(f) of the Settlement Agreement in all respects.

As a result of the foregoing, the "Approval Date" under the Settlement Agreement has occurred on October 13, 2015. Accordingly, among other things, (i) the servicing improvements set out in Subparagraph 5(c) of the Settlement Agreement and the reporting and attestation obligations set out in Subparagraph 5(f) of the Settlement Agreement are now in effect; (ii) pursuant to Subparagraph 3(c)(iv) of the Settlement Agreement, the Expert is required to calculate the Allocable Share of each Settlement Trust within ninety (90) days of October 13, 2015, and (iii) pursuant to Subparagraph 3(a) of the Settlement Agreement, Bank of America and/or Countrywide are required to pay the Settlement Payment or cause the Settlement Payment to be paid in accordance with Subparagraph 3(b) of the Settlement Agreement within one-hundred and twenty (120) days of October 13, 2015.

The Trustee expects to provide one or more additional informational notices (x) after the Expert determines the Allocable Share of each Settlement Trust in accordance with Subparagraph 3(c) of the Settlement Agreement and (y) after Countrywide and/or Bank of America inform the Trustee of the date on which the Settlement Payment will be paid in accordance with Subparagraph 3(b) of the Settlement Agreement (at which time the Trustee expects to also give notice concerning the applicable distribution date on which the Settlement Trusts' Allocable Shares will be distributed to Investors in accordance with Subparagraph 3(d) of the Settlement Agreement).

This Notice is not intended to be and should not be construed as investment, accounting, financial, legal or tax advice by or on behalf of the Trustee, or its directors, officers, affiliates, agents, attorneys or employees. Each person receiving this Notice is urged to carefully review the Notice and should seek the advice of its own advisors in respect of the matters set forth herein.

If you have any questions regarding this Notice, please contact the Trustee by email at Questions@cwrmbssettlement.com or by telephone at (866) 294-7876 or (614) 569-0289.

THE BANK OF NEW YORK MELLON, as
Trustee for the Settlement Trusts

EXHIBIT A

LIST OF SETTLEMENT TRUSTS

1. CWALT 2004-10CB
2. CWALT 2004-12CB
3. CWALT 2004-13CB
4. CWALT 2004-14T2
5. CWALT 2004-15
6. CWALT 2004-16CB
7. CWALT 2004-17CB
8. CWALT 2004-18CB
9. CWALT 2004-20T1
10. CWALT 2004-22CB
11. CWALT 2004-24CB
12. CWALT 2004-25CB
13. CWALT 2004-26T1
14. CWALT 2004-27CB
15. CWALT 2004-28CB
16. CWALT 2004-29CB
17. CWALT 2004-2CB
18. CWALT 2004-30CB
19. CWALT 2004-32CB
20. CWALT 2004-33
21. CWALT 2004-34T1
22. CWALT 2004-35T2
23. CWALT 2004-36CB
24. CWALT 2004-3T1
25. CWALT 2004-4CB
26. CWALT 2004-5CB
27. CWALT 2004-6CB
28. CWALT 2004-7T1
29. CWALT 2004-8CB
30. CWALT 2004-9T1
31. CWALT 2004-J10
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396. CWHL 2007-7
397. CWHL 2007-8
398. CWHL 2007-9
399. CWHL 2007-HY1
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402. CWHL 2007-HY5
403. CWHL 2007-HY6
404. CWHL 2007-HY7
405. CWHL 2007-HYB1
406. CWHL 2007-HYB2
407. CWHL 2007-J1
408. CWHL 2007-J2
409. CWHL 2007-J3
410. CWHL 2008-1
411. CWL 2004-1
412. CWL 2004-10
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425. CWL 2004-9
426. CWL 2004-AB1
427. CWL 2004-AB2
428. CWL 2004-BC2
429. CWL 2004-BC3
430. CWL 2004-BC4
431. CWL 2004-BC5
432. CWL 2004-ECC1
433. CWL 2004-ECC2
434. CWL 2004-S1
435. CWL 2004-SD2
436. CWL 2004-SD3
437. CWL 2004-SD4
438. CWL 2005-1
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456. CWL 2005-AB2
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458. CWL 2005-AB4
459. CWL 2005-AB5
460. CWL 2005-BC1
461. CWL 2005-BC2
462. CWL 2005-BC3
463. CWL 2005-BC4
464. CWL 2005-BC5
465. CWL 2005-HYB9
466. CWL 2005-IM1
467. CWL 2005-IM2
468. CWL 2005-IM3
469. CWL 2005-SD1
470. CWL 2005-SD2
471. CWL 2005-SD3
472. CWL 2006-1
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497. CWL 2006-9
498. CWL 2006-ABC1
499. CWL 2006-BC1
500. CWL 2006-BC2
501. CWL 2006-BC3
502. CWL 2006-BC4
503. CWL 2006-BC5
504. CWL 2006-IM1
505. CWL 2006-QH1
506. CWL 2006-SD1
507. CWL 2006-SD2
508. CWL 2006-SD3
509. CWL 2006-SD4
510. CWL 2006-SPS1
511. CWL 2006-SPS2
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524. CWL 2007-9
525. CWL 2007-BC1
526. CWL 2007-BC2
527. CWL 2007-BC3
528. CWL 2007-SD1
529. CWL 2007-SEA1
530. CWL 2007-SEA2

EXHIBIT B

PRIVATE LETTER RULING

[Attached]

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Index Number: 860D.00-00

Date:
October 05, 2015

Legend:

Trustee =
Taxpayer A =
Taxpayer B =
State =
Company A =
Company B =
Company C =
Company D =
Company E =
Company F =
Company G =
Company H =
Company I =

Company J = [redacted]

Exchange = [redacted]

Year 1 = [redacted]

Year 2 = [redacted]

Year 3 = [redacted]

Month 1 = [redacted]

Month 2 = [redacted]

Date 1 = [redacted]

Date 2 = [redacted]

Date 3 = [redacted]

Court 1 = [redacted]

Court 2 = [redacted]

A = [redacted]

B = [redacted]

C = [redacted]

Dear [redacted]

This letter is in reply to a letter dated April 8, 2015 and subsequent correspondence in which Trustee, solely in its capacity as trustee or indenture trustee of each real estate mortgage investment conduit ("REMIC") identified in Appendix A (each a "Taxpayer" and, collectively, the "Taxpayers"), requests certain rulings in connection with each Taxpayer's qualification as a REMIC under Sections 860A-860G of the Internal Revenue Code. Specifically, you have asked for the following rulings:

1. In the case of each Taxpayer for which a timely, valid and continuing REMIC election has been made in accordance with the applicable Governing Agreement (as defined below), none of (i) the execution of the Settlement Agreement (as defined below), (ii) the methodology for determining, and the right to receive, an Allocable Share (as defined below) of the Settlement Payment (as defined

below), (iii) the receipt of an Allocable Share of the Settlement Payment, or (iv) the reduction of unreimbursed advances owed to the Master Servicer (as defined below) attributable to any Master Servicing Fee Adjustment (as defined below) (or, in the case of Taxpayer A and Taxpayer B, the receipt of any Master Servicing Fee Adjustment) will cause the Taxpayer to fail to meet the requirements of Section 860D(a)(4).

2. In the case of each Taxpayer for which a timely, valid and continuing REMIC election has been made in accordance with the applicable Governing Agreement, the receipt of an Allocable Share of the Settlement Payment will be treated as a payment received on qualified mortgages within the meaning of Section 1.860G-2(g)(1)(ii) of the Income Tax Regulations.

3. In the case of each Taxpayer for which a timely, valid and continuing REMIC election has been made in accordance with the applicable Governing Agreement, the distribution of an Allocable Share amount in accordance with the applicable Governing Agreement and the Settlement Agreement will not cause any regular interest in such Taxpayer to fail to qualify as a "regular interest" as defined in Section 860G(a)(1) or the sole class of residual interest in such Taxpayer to fail to qualify as a "residual interest" as defined in Section 860G(a)(2).

4. In the case of each Taxpayer for which a timely, valid and continuing REMIC election has been made in accordance with the applicable Governing Agreement, neither the receipt of an Allocable Share amount nor the reduction of unreimbursed Advances owed to the Master Servicer attributable to any Master Servicing Fee Adjustment (or, in the case of Taxpayer A and Taxpayer B, the receipt of any Master Servicing Fee Adjustment) will be treated as a "prohibited transaction" within the meaning of Section 860F(a)(2) or as a contribution that is subject to the tax imposed under Section 860G(d)(1).

Facts

Background

Each Taxpayer has elected to be treated as a REMIC within the meaning of Section 860D and is evidenced by separate Pooling and Servicing Agreements or Indentures and related Sales and Servicing Agreements (each a "Governing Agreement" and collectively, the "Governing Agreements"). Under the Governing Agreements, Trustee serves as trustee or indenture trustee for each of the Taxpayers. The law of State governs the rights and obligations of the parties to the Governing Agreements, including the Trustee. The annual accounting period for each Taxpayer is the calendar year and each Taxpayer utilizes the accrual method of accounting for maintaining its accounting books and filing its U.S. federal income tax return.

Taxpayers function as residential mortgage loan securitization vehicles. The Taxpayers were established during the period of Year 1 through Year 2 for the primary

purpose of raising money in the securitization market for pools of residential real estate mortgage loans originated or acquired by Company A and its affiliates, the sponsor of the mortgage securitizations. The aggregate principal balance of mortgage loans that were securitized through the Taxpayers was approximately $A.

Trustee is a wholly owned banking subsidiary of Company B, a public company whose shares of common stock are traded on Exchange.

The securitization process for each Taxpayer generally occurred as follows:

(1) Company C and one or more of its affiliates, Company D, Company E, Company F, and Company G (collectively, the "Seller"), sold portfolios of residential mortgage loans (the "Mortgage Loans") to a Company A entity (the "Depositor").

(2) For Taxpayers governed by Pooling and Servicing Agreements, the Depositor conveyed the Mortgage Loans to Trustee, as trustee, to be held in trust. For Taxpayers governed by Indentures and Sales and Servicing Agreements, the Depositor conveyed the Mortgage Loans to the Taxpayer, for the benefit of noteholders, and the Taxpayer granted Trustee, in its capacity as indenture trustee, all of Taxpayer's right, title, and interest in the Mortgage Loans.

(3) Several classes of certificates or notes representing various entitlements to the underlying mortgage pool's cash flows then were issued and sold through an underwriter or underwriters to investors including, with respect to certain Taxpayers, interests in an upper-tier REMIC that held all of the regular interests in such Taxpayer, directly or through one or more intermediate REMICs (the holders of any such interests in a Taxpayer or in such an upper-tier REMIC holding all of the regular interests in a Taxpayer, the "Investors").

(4) Company C or Company H acted as "Master Servicer" for each of the Taxpayers and was charged with responsibility for, among other things, collecting debt service payments on the Mortgage Loans, taking any necessary enforcement action against borrowers, and remitting payments on a monthly basis to the Trustee for distribution to the Investors.

In each securitization, an election was made to treat the Mortgage Loans held by each Taxpayer and related assets as a REMIC under the Code.

The Governing Agreement for each Taxpayer contains a series of representations and warranties made by the Seller for the benefit of the Taxpayer. In general, these include representations that the Mortgage Loans were underwritten in all material respects in accordance with certain underwriting guidelines, that the Mortgage Loans conform in all material respects to their descriptions in the investor disclosure documents, that the origination, underwriting and collection practices of the Seller and Master Services have been legal, prudent and customary in the mortgage lending and

servicing business, and that the Mortgage Loans were originated in accordance with all applicable laws.

The Governing Agreements also impose servicing obligations on the Master Servicer, requiring among other things, that the Master Servicer service and administer the Mortgage Loans in accordance with the terms of the Governing Agreements and customary and usual standards of prudent mortgage loan servicers.

The Dispute

Beginning in Month 1 of Year 3 a dispute arose concerning the Sellers' alleged breaches of certain representations and warranties under the Governing Agreements and the Master Servicer's alleged violations of servicing obligations. The allegations were first brought to the Trustee by a group made up of certain institutional Investors (the "Institutional Investors").

The Institutional Investors asserted that Company I is liable for the obligations of Company A. Company I and Company A have disagreed both as to the alleged breaches and as to Company I's alleged liability for Company A's obligations. Subsequent to the mortgage securitizations involving Taxpayers, Company A was acquired by Company I and is currently a separate subsidiary of Company I. Additionally, Company H merged with and into Company J, which currently acts as Master Servicer for the Taxpayers.

In a letter dated Month 1 of Year 3 to the Trustee, the Institutional Investors asserted that a large number of Mortgage Loans which Company A had sold to the Taxpayers failed to comply with certain representations and warranties Company A had given in the Governing Agreements, and therefore, Company A was in breach under the Governing Agreements. The assertion was based in part on (i) alleged excessive early default and foreclosure rates for the Mortgage Loans, (ii) previous settlements reached by Company A with the attorneys general of various states, and (iii) certain publicly disclosed e-mails from Company A officials alleged to be evidence of breaches of representations and warranties. The Institutional Investors believed that large numbers of the Mortgage Loans were subject to repurchase pursuant to the Governing Agreements as a result of these breaches.

The representations and warranties of the Sellers that were alleged to have been violated generally concerned whether the Mortgage Loans had been originated and underwritten in compliance with standards and guidelines described in the Governing Agreements and whether the Mortgage Loans met the descriptions provided in the Governing Agreements concerning loan-to-value ratios, title insurance, and appraisals. The Governing Agreements provided that, upon discovery and notice of a breach of a representation and warranty with respect to a Mortgage Loan that materially and adversely affects the interests of the Investors, the Seller shall cure the breach within B days or repurchase the affected Mortgage Loan for an amount equal to its "purchase

price," which is an amount equal to the unpaid principal balance of the affected Mortgage Loan plus accrued and unpaid interest thereon.

On Date 1, the Institutional Investors asserted in a separate letter to the Trustee and the Master Servicer a notice of non-performance pursuant to the Governing Agreements that Company H, as Master Servicer, had also breached several provisions of the Governing Agreements. The Institutional Investors alleged the Company H violated the Governing Agreements by failing and refusing to notify the Trustee and others of Company A's breaches of representations and warranties and that Company H failed to meet its obligations under the Governing Agreements to represent and protect the interests of the REMICs in the same manner as it protects its own interest in mortgage loans in its own portfolios. The notice of non-performance also asserted that Company H breached the Governing Agreements by (i) failing to maintain accurate and adequate loan and collateral files in a manner consistent with prudent mortgage servicing standards, (ii) failing to demand that the Sellers cure deficiencies in mortgage records, (iii) incurring avoidable and unnecessary servicing fees as a result of its allegedly deficient record-keeping, and (iv) overcharging the costs for maintenance, inspection and other services with regard to the defaulted Mortgage Loans.

The Institutional Investors further stated in the notice of non-performance that each of the alleged breaches described in the notice materially affected the Investors' rights under the trusts and warned that a failure to cure would constitute an event of default under the Governing Agreements.

Beginning in Month 2 of Year 3, the Trustee, on behalf of the Taxpayers, engaged in negotiations with the Institutional Investors, Company A, and Company I in an attempt to reach a settlement relating to the alleged breaches of the Governing Agreements. The negotiations resulted in a settlement (the "Settlement") memorialized in a Settlement Agreement (the "Settlement Agreement") between the Trustee, Company A, Company C, Company H, and Company I. In a separate agreement entered into with the Trustee, Company A, and Company I, the Institutional Investors committed to support the Settlement.

The Settlement was conditioned upon final court approval. To that end, the Trustee, on behalf of the Taxpayers, commenced in Court 1 on Date 2, a proceeding seeking judicial instructions and approval of the Settlement. After an evidentiary hearing and decision by Court 1, the decision was appealed to Court 2. On Date 3, Court 2 modified the decision of Court 1 and approved the Settlement and Settlement Agreement in all respects, thus, rendering final court approval of the Settlement.

The Settlement Agreement

The Settlement Agreement has two primary components. One, a $C settlement payment payable by Company A and/or Company I to be allocated among the Taxpayers (the "Settlement Payment") and, two, servicing and document improvements to be implemented with respect to each Taxpayer.

The Settlement Payment will be allocated among the Taxpayers in accordance with an allocation formula that accounts for past and expected future losses associated with the Mortgage Loans held by each Taxpayer. An independent financial advisor (the "Expert") retained by the Trustee will perform any calculations required in connection with the allocation formula, and those allocation calculations will be treated as final and accepted by the parties, absent bad faith or manifest error.

The Settlement Payment allocations are determined by reference to the amount of "net losses" incurred by each Taxpayer. The Expert will calculate the amount of net losses for each Taxpayer that have been or are estimated to be borne by that Taxpayer from its inception date to its expected termination. That amount will be expressed as a percentage of the sum of the net losses that are estimated to be borne by all Taxpayers from their inception dates to their expected dates of termination (the "Net Loss Percentage"). The Expert will calculate each Taxpayer's allocable share of the Settlement Payment by multiplying the amount of the Settlement Payment by the Net Loss Percentage for each Taxpayer (the "Allocable Share"). If applicable, the Expert will calculate the portion of the Allocable Share that relates to principal-only certificates or notes, and the portion of the Allocable Share that relates to all other certificates or notes.

Upon completion of the Expert's calculation of each Taxpayer's Allocable Share and at the direction of the Trustee, Company I will wire each Taxpayer's Allocable Share into the related Taxpayer's collection account or certificate account for distribution to Investors.

Taxpayers represent that the distribution provisions of the Settlement Agreement do not alter the rights or obligations of any of the Taxpayers or the Investors' interests therein and that the distribution of Allocable Shares to Investors is consistent with the distribution provisions contained in the Governing Agreements. More specifically, the Trustee will distribute the Allocable Shares to Investors as though it were a "subsequent recovery" as defined in the applicable Governing Agreements. A subsequent recovery is defined as an unexpected amount that a REMIC trust might receive from time to time with respect to a Mortgage Loan for which the Master Servicer has previously determined that all liquidation proceeds that it expects to recover on the Mortgage Loan or the related mortgaged property have been received and, consequently, a realized loss typically has been taken and applied under the applicable Governing Agreement to reduce the outstanding principal balance(s) of the outstanding REMIC regular interest certificates, in inverse order of seniority. Subsequent recoveries are made as returns of principal only on the then-outstanding principal balances of the relevant Investors' interest.

For Taxpayers with Governing Agreements that do not contain a defined "subsequent recovery" term, the Allocable Share will be distributed to the related Investors in accordance with the distribution provisions of the applicable Governing

Agreement as though it was an unscheduled payment of principal available for distribution on that distribution date.

The Settlement Agreement also provides that if, as a result of the distribution of an Allocable Share to Investors by a particular Taxpayer, a principal payment would become payable to a class of REMIC residual interests, such payment (other than a final distribution date of the REMIC) shall be maintained in the distribution account and the Trustee shall distribute it to Investors on the next distribution date as though it was a subsequent recovery or unscheduled payment of principal available for distribution on that date.

For the servicing component of the Settlement Agreement, the Master Servicer has agreed to implement various servicing improvements and remedies. The improvements are intended to provide for servicing performance by Company J, as Master Servicer, with respect to the Mortgage Loans that have not been transferred to subservicing at or above industry standards specified in the Settlement Agreement and a mechanism for Company J to transfer high risk loans to subservicers for more individualized attention.

For all loans not in subservicing, Company J has agreed to (i) benchmark its servicing performance on a monthly basis against specific industry standards set forth in the Settlement Agreement , (ii) send to the Trustee on a monthly basis statistics comparing Company J's performance to such industry standards, and (iii) calculate and include in its monthly statement a master servicing fee payment ("Master Servicing Fee Adjustment") payable by it to a Taxpayer if Company J's aggregate performance with regard to such Taxpayer fails to meet such industry standards, which payment would be satisfied by reducing unreimbursed advances due to Company J, as Master Servicer. For Taxpayer A and Taxpayer B, no unreimbursed advances have been made and no advance liens exist and, as a result, the Settlement Agreement provides that the Master Servicing Fee Adjustment is to be wired to the Trustee by the Master Servicer and distributed in the same manner as an Allocable Share.

Law and Analysis

Issue #1 and #2: Qualified Mortgages, Permitted Investments, and Payments Received on Qualified Mortgages

Section 860D(a) provides that the terms "real estate mortgage investment conduit" and "REMIC" mean any entity that meets several requirements including that as of the close of the third month beginning after the startup day and at all times thereafter, substantially all of the assets of the entity consist of qualified mortgages and permitted investments.

Section 860G(a)(3)(A) defines qualified mortgage to include any obligation (including any participation or certificate of beneficial ownership therein) which is principally secured by an interest in real property and which (i) is transferred to the

REMIC on the startup day in exchange for regular or residual interests in the REMIC,(ii) is purchased by the REMIC within the 3-month period beginning on the startup day if, except as provided in regulations, such purchase is pursuant to a fixed-price contract in effect on the startup day, or (iii) represents an increase in the principal amount under the original terms of an obligation described in clause (i) or (ii) if such increase—(I) is attributable to an advance made to the obligor pursuant to the original terms of a reverse mortgage loan or other obligation, (II) occurs after the startup day, and (III) is purchased by the REMIC pursuant to a fixed price contract in effect on the startup day.

Section 860G(a)(5) defines "permitted investments" to mean any cash flow investment, qualified reserve asset, or foreclosure property. Section 860G(a)(6) defines "cash flow investment" to mean any investment of amounts received under qualified mortgages for a temporary period before distribution to holders of interests in the REMIC.

Section 1.860D-1(b)(3)(i) provides that for purposes of the asset test of section 860D(a)(4), substantially all of a qualified entity's assets are qualified mortgages and permitted investments if the qualified entity owns no more than a *de minimis* amount of other assets. Section 1.860D-1(b)(3)(ii) provides that the amount of assets other than qualified mortgages and permitted investments is *de minimis* if the aggregate of the adjusted bases of those assets is less than one percent of the aggregate of the adjusted bases of all of the REMIC's assets.

Section 1.860G-2(g)(1)(ii) states that, in determining what is a cash flow investment, the term "payments received on qualified mortgages" includes, among other payments, payments by a sponsor or prior owner in lieu of the sponsor's or prior owner's repurchase of a defective obligation, as defined in Section 1.860G-2(g)(1)(ii)(f), that was transferred to the REMIC in breach of a customary warranty.

Section 1.860G-2(f)(1) defines a defective obligation as a mortgage subject to certain defects including that the mortgage does not conform to a customary representation or warranty given by the sponsor or prior owner of the mortgage regarding the characteristics of the mortgage, or the characteristics of the pool of mortgages of which the mortgage is a part.

Each Taxpayer's right to receive its Allocable Share under the Settlement Agreement arises from the Mortgage Loans. The Allocable Share for each Taxpayer is a contract claim that stems directly from the rights held by the Trustee on behalf of each Taxpayer and its status as a REMIC. Therefore, a Taxpayer's right to receive an Allocable Share does not constitute an asset that is newly acquired by a REMIC after its startup date. The execution of the Settlement Agreement, the methodology used to determine a Taxpayer's Allocable Share, the receipt of the Allocable Share by a Taxpayer, and the Master Servicing Fee Adjustment arise from each Taxpayer's interest in the Mortgage Loans and its status as a REMIC, and, therefore, will not cause any Taxpayer to fail to meet the requirements under Section 860D(a)(4).

The Allocable Share under Settlement Agreement is the result of a dispute between Institutional Investors and the Trustee with Company A and Company I regarding whether the Mortgage Loans conveyed to each Taxpayer violated customary representations and warranties under the respective Governing Agreements. For purposes of the REMIC rules, a defective obligation includes mortgages that do not conform to a customary representation or warranty given by the sponsor or prior owner of the mortgage regarding the characteristics of the mortgage, or the characteristics of the pool of mortgages of which the mortgage is a part. Each Taxpayer's right to the Allocable Share under the Settlement Agreement is akin to a payment received by such Taxpayer from a sponsor or prior owner in lieu of the sponsor or prior owner's repurchase of such a defective obligation. Therefore, pursuant to Section 1.860G-2(g)(1)(ii), the Allocable Share will be considered a payment received on a qualified mortgage pursuant to Section 1.860G-2(g)(1)(ii).

Issue #3: Regular and Residual Interests

Section 860G(a)(1) defines a "regular interest" in a REMIC to mean any interest in a REMIC which is issued on the startup day with fixed terms and which is designated as a regular interest if (A) such interest unconditionally entitles the holder to receive a specified principal amount (or other similar amount), and (B) interest payments (or other similar amount), if any, with respect to such interest at or before maturity (i) are payable based on a fixed rate (or to the extent provided in regulations, at a variable rate), or (ii) consist of a specified portion of the interest payments on qualified mortgages and such portion does not vary during the period such interest is outstanding.

Section 860G(a)(2) defines a "residual interest" in a REMIC to mean an interest in a REMIC which is issued on the startup day, which is not a regular interest, and which is designated as a residual interest.

Section 860G(a)(9) defines the term "startup day" to mean the day on which the REMIC issues all of its regular and residual interests.

Section 1.860G-1(a)(1) provides that, for purposes of Section 860G(a)(1), a REMIC designates an interest as a regular interest by providing to the Internal Revenue Service the information specified in Section 1.860D-1(d)(2)(ii) in the time and manner specified in Section 1.860D-1(d)(2). Section 1.860G-1(c) provides that a residual interest is an interest in a REMIC that is issued on the startup day and that is designated as a residual interest by providing the information specified in § 1.860D-1(d)(2)(ii) at the time and in the manner provided in Section 1.860D-1(d)(2). A residual interest need not entitle the holder to any distributions from the REMIC.

Section 1.860G-1(a)(4) provides that, for purposes of Section 860G(a)(1), a regular interest in a REMIC has fixed terms on the startup day if, on the startup day, the REMIC's organizational documents irrevocably specify (i) the principal amount (or other similar amount) of the regular interest, (ii) the interest rate or rates used to compute any

interest payments (or other similar amounts) on the regular interest, and (iii) the latest possible maturity date of the interest.

A REMIC regular interest must be issued on the startup date with fixed terms. A REMIC residual interest is an interest in the REMIC issued on the startup date that is not a regular interest. Taxpayers represent that the distribution provisions of the Settlement Agreement do not alter the rights or obligations of any of the Taxpayers or the Investors' interests therein and that the distribution of Allocable Shares to Investors is consistent with the distribution provisions contained in the Governing Agreements. The Allocable Shares will be distributed by the Taxpayers to the regular interest holders under the applicable Governing Agreements in accordance with the distribution provisions as either a subsequent recovery or as though it was an unscheduled payment of principal available for distribution on that date. The Settlement Agreement also provides that should a principal payment become payable to a class of REMIC residual interests, such payment will be maintained in the distribution account and the Trustee shall distribute it to Investors on the next distribution date as though it was a subsequent recovery or unscheduled payment of principal available for distribution on that date. Accordingly, the distribution of an Allocable Share to Investors will not cause any regular interest in a Taxpayer to fail to qualify as a regular interest or the sole class of residual interest in the Taxpayer to fail to qualify as a residual interest.

Issue #4: Tax on Contributions after Startup Date and Prohibited Transaction

Except as provided in Section 860G(d)(2), Section 860G(d)(1) imposes on any amount that is contributed to a REMIC after the startup day a tax on 100 percent of the amount contributed. Section 860G(d)(2) provides that the tax on contributions after the startup date shall not apply to any contribution which is made in cash and is either (A) any contribution to facilitate a cleanup call (as defined in regulations) or a qualified liquidation,(B) any payment in the nature of a guarantee, (C) any contribution during the 3-month period beginning on the startup day, (D) any contribution to a qualified reserve fund by any holder of a residual interest in the REMIC, or (E) any other contribution permitted in regulations.

Section 860F(a)(1) imposes a tax equal to 100 percent of the net income derived from prohibited transactions. Section 860F(a)(2) defines prohibited transaction to mean one of the following: (A) disposition of any qualified mortgage transferred to the REMIC other than a disposition pursuant to (i) the substitution of a qualified replacement mortgage for a qualified mortgage (or the repurchase in lieu of substitution of a defective obligation), (ii) a disposition incident to the foreclosure, default, or imminent default of the mortgage, (iii) the bankruptcy or insolvency of the REMIC, or (iv) a qualified liquidation, (B) the receipt of any income attributable to any asset which is neither a qualified mortgage nor a permitted investment, (C) the receipt by the REMIC of any amount representing a fee or other compensation for services, or (D) gain from the disposition of any cash flow investment other than pursuant to any qualified liquidation.

Section 1.860D-1(b)(2)(i) provides that the right to receive from the REMIC payments that represent reasonable compensation for services provided to the REMIC in the ordinary course of its operation is not an interest in the REMIC. Payments made by the REMIC in exchange for services may be expressed as a specified percentage of interest payments due on qualified mortgages or as a specified percentage of earnings from permitted investments. For example, a mortgage servicer's right to receive reasonable compensation for servicing the mortgages owned by the REMIC is not an interest in the REMIC.

As discussed above, the receipt of the Allocable Share by a Taxpayer, and the Master Servicing Fee Adjustment arise from the Mortgage Loans and each Taxpayer's status as a REMIC. The Allocable Share arises in connection with each Taxpayer's interest in the Mortgage Loans and is neither a contribution of cash to the REMIC nor is it listed as a prohibited transaction in Section 860F(a)(2). The Master Servicing Fee Adjustment is similarly not a contribution of cash to the relevant Taxpayer, but is an amount reimbursed (or, in the case of Taxpayer A and Taxpayer B, an amount received) in connection with compensation for services provided to the Taxpayer in the ordinary course of the Taxpayer's operation. No Taxpayer is performing any services in connection with the Master Servicing Fee Adjustment. As a result, neither the receipt of the Allocable Share by a Taxpayer nor the Master Servicing Fee Adjustment will be treated as a prohibited transaction within the meaning of Section 860F(a)(2) or as a contribution subject to tax under Section 860G(d)(1).

Conclusion

We hereby rule as follows:

1. In the case of each Taxpayer for which a timely, valid and continuing REMIC election has been made in accordance with the applicable Governing Agreement, none of (i) the execution of the Settlement Agreement, (ii) the methodology for determining, and the right to receive, an Allocable Share of the Settlement Payment, (iii) the receipt of an Allocable Share of the Settlement Payment, or (iv) the reduction of unreimbursed advances owed to the Master Servicer attributable to any Master Servicing Fee Adjustment (or, in the case of Taxpayer A and Taxpayer B, the receipt of any Master Servicing Fee Adjustment) will cause the Taxpayer to fail to meet the requirements of Section 860D(a)(4).

2. In the case of each Taxpayer for which a timely, valid and continuing REMIC election has been made in accordance with the applicable Governing Agreement, the receipt of an Allocable Share of the Settlement Payment will be treated as a payment received on qualified mortgages within the meaning of Section 1.860G-2(g)(1)(ii).

3. In the case of each Taxpayer for which a timely, valid and continuing REMIC election has been made in accordance with the applicable Governing Agreement, the distribution of an Allocable Share amount in accordance with the applicable

Governing Agreement and the Settlement Agreement will not cause any regular interest in such Taxpayer to fail to qualify as a "regular interest" as defined in Section 860G(a)(1) or the sole class of residual interest in such Taxpayer to fail to qualify as a "residual interest" as defined in Section 860G(a)(2).

4. In the case of each Taxpayer for which a timely, valid and continuing REMIC election has been made in accordance with the applicable Governing Agreement, neither the receipt of an Allocable Share amount nor the reduction of unreimbursed advances owed to the Master Servicer attributable to any Master Servicing Fee Adjustment (or, in the case of Taxpayer A and Taxpayer B, the receipt of any Master Servicing Fee Adjustment) will be treated as a "prohibited transaction" within the meaning of Section 860F(a)(2) or as a contribution that is subject to the tax imposed under Section 860G(d)(1).

This ruling's application is limited to the facts, representations, Code sections, and regulations cited herein. Except as specifically ruled upon above, no opinion is expressed concerning any federal income tax consequences related to the facts herein under any other provisions of the Code. Specifically, we do not rule whether any Taxpayer qualifies as a REMIC under Sections 860A-860G or whether any Mortgage Loan qualifies as a qualified mortgage as defined in Section 860G(a)(3).

This ruling is directed only to the taxpayers that requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent. In accordance with the provisions of a Power of Attorney on file, we are sending a copy of this ruling letter to your authorized representatives.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

[redacted]

cc:

[redacted]

Appendix A